

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application W-91700.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Filing--Oil and Gas Leases: Applications: Drawings

Departmental regulations define a person or entity in the business of providing assistance to participants in the Federal simultaneous leasing program as one who signs, prepares, completes, or formulates applications. When the record indicates a third party did nothing more than provide an applicant with parcel recommendations, that party has not "formulated" the application within the meaning of 43 CFR 3112.0-5 or 43 CFR 3112.2-4.

APPEARANCES: Bruce W. Yoshiwara, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Bruce W. Yoshiwara has appealed from an April 17, 1985, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his simultaneous noncompetitive oil and gas lease application for parcel WY-556, which had been selected with first priority in the October 1984 simultaneous oil and gas lease drawing.

On Part B (Form 3112-6a (April 1984)) of Yoshiwara's simultaneous noncompetitive oil and gas lease application a space entitled "FILING ASSISTANCE (Full Name, Address and Zip Code, If Applicable)" had been left blank. During the course of its routine review of lease applications, BLM became suspicious that Yoshiwara had received assistance in preparing and filing the application. 1/ By letter to Yoshiwara, dated January 14, 1985, BLM requested information concerning assistance he may have received. Yoshiwara responded and

1/ According to the record, BLM suspected assistance had been provided when the application was received in a preprinted large, white envelope. This

informed BLM that he had been advised by Sierra Nevada Earth Sensing, Inc. (Sierra Nevada) and provided BLM with a copy of his "advisory agreement" with Sierra Nevada. ^{2/} BLM rejected Yoshiwara's application because he failed to indicate that Sierra Nevada had provided assistance with the application. In its decision rejecting the application, BLM provided the following rationale:

Federal Register Notice 48 FR 37656 published August 19, 1983, stated:
 "Pursuant to the final rulemaking of July 22, 1983 (48 FR 33648) * * * the Bureau of Land Management hereby gives notice that effective August 22, 1983, it will strictly enforce the provisions of * * * § 3112.2-4 which pertain to filing assistance * * *. Amended § 3112.2-4 requires identification of any party rendering any type of assistance in the filing of an application submitted under Part 3112."

One of the critical criteria in determining whether assistance falls under the ambit of "filing service assistance" is the degree of choice in parcel selection exercised by the client. Where assistance is limited to providing evaluations of parcels, and where the client exercises complete choice regarding which parcels, how many parcels, etc., are selected, we would not consider that "filing service assistance." Where, however, that degree of choice is not provided, where the assistance consists of a finite list of recommended parcel numbers, there is the clear implication that there is little or no choice on the part of the client, and that is a sufficient criterion for determining "filing service assistance."

fn. 1 (continued)

type of envelope had formerly been used by a business entity, Smith-Webber, that had been ordered to cease operations by the State of Florida. It is the Department's policy to seek disclosure of filing services and others providing vital services in preparing and filing applications in order to protect applicants from those persons or entities who would use the simultaneous oil and gas leasing system in a fraudulent scheme. See Satellite 8211104, 89 IBLA 388, 396 n.10 (1985), quoting Instruction Memorandum No. 85-545 (July 11, 1985).

^{2/} The following is a pertinent portion of that agreement:

"WHEREAS, Sierra Nevada Earth Sensing, Inc. has offered to provide advisory services for a fee to Client recommending the filing for oil and gas rights on selected parcels of land.

"WHEREAS, Client desires to participate in the purchase of oil and gas rights to public lands offered by federal and state authorities and, to retain the advisory services of Sierra Nevada Earth Sensing, Inc.

"NOW, THEREFORE, in consideration of the mutual covenants and condition herein contained, Sierra Nevada Earth Sensing, Inc. and Client hereby agree as follows:

In his statement of reasons, Yoshiwara asserts that Sierra Nevada's name was omitted from the application form pursuant to instructions from Sierra Nevada. He also states, "I do not know your purpose for requiring that information on the form, but I clearly had nothing to benefit by omitting that information, and I did provide you with supplementary information when you requested it."

[1] The Departmental regulation governing filing assistance applied by BLM in rejecting appellant's application, 43 CFR 3112.2-4, provides as follows:

Any applicant receiving the assistance of any person or entity which is in the business of providing assistance to participants in the Federal simultaneous oil and gas leasing program shall indicate on the lease application the name of the party or filing service that provided assistance.

43 CFR 3112.0-5 defines the term "any person or entity which is in the business of providing assistance to participants in the Federal simultaneous oil and gas leasing program" as:

[T]hose enterprises, commonly known as filing services, which sign, formulate, prepare or otherwise complete or file applications for oil and gas leases for consideration. All other services such as general secretarial assistance or general geologic advice whether or not it is specifically related to Federal lease parcels or leasing, are excluded from this definition.

Parties dealing with the Federal Government are presumed to have knowledge of relevant requirements found in duly promulgated regulations and cannot excuse their noncompliance by reliance on others. See Federal Corp Insurance Co. v. Merrill, 332 U.S. 380 (1947); Michael R. Ware, 88 IBLA 111

fn. 2 (continued)

"1. Sierra Nevada Earth Sensing, Inc., will under no circumstances either accept or participate in any profits from sales or royalties on leased lands.

"2. Retainer: Client hereby agrees to retain Sierra Nevada Earth Sensing, Inc. and Sierra Nevada Earth Sensing, Inc. agrees to provide a total of 6 recommendations on selected parcels of land offered in connection with the Federal and State of Wyoming simultaneous oil and gas lease program. In consideration for the advisory services to be provided by Sierra Nevada Earth Sensing, Inc. Client agrees to pay in advance the sum of \$1632.00.

"3. Selection: The suggested selection of the parcels is to be made by Sierra Nevada Earth Sensing, Inc. from a list provided by The Bureau of Land Management, or the Commissioner of Public Lands, State of Wyoming. Each filing period, Sierra Nevada Earth Sensing, Inc. will forward parcel recommendations to Client and advise Client of the appropriate filing fee to be paid to the appropriate agency."

(1985). 43 CFR 3112.2-4 complements other regulations that prohibit a person from having an interest in more than one application to lease a parcel or having more than one opportunity to obtain a lease by making multiple filings (see 43 CFR 3112.2-1(f), 3112.5-1(b)) by requiring information that would disclose or otherwise indicate a violation of these prohibitions. See William Reppy, 90 IBLA 80, 81-82 (1985). Rejection of an application that omits required information directly discourages an applicant from omitting it. Accordingly, the responsibility was upon Yoshiwara, as applicant, to determine whether the assistance he received was within the definition of 43 CFR 3112.2-4 and 3112.0-5.

Our disposition of this appeal turns upon whether the assistance Sierra Nevada provided appellant falls within the definition found at 43 CFR 3112.0-5. This Board recently addressed this question in Glen E. McCuistion, 89 IBLA 228, 231-32 (1985), as follows:

The question presented on this appeal is whether Wesco is "in the business of providing assistance to participants in the Federal simultaneous oil and gas leasing program" as defined at 43 CFR 3112.0-5. Wesco is in that business if it "sign[s], formulate[s], prepare[s], or otherwise complete[s] or file[s] applications for oil and gas leases for consideration." 43 CFR 3112.0-5. We find that Wesco's providing parcel recommendations along with instructions as to how to properly complete a lease application does not bring it within the ambit of the regulations.

We are bound by this Board's ruling in Ronald Valmonte, [87 IBLA 197 (1985)], wherein we held that Wesco had not rendered "assistance" to Valmonte by making parcel recommendations, so that Valmonte was under no legal compulsion to indicate on his lease application that he had entered into a contract with Wesco. The Board rejected BLM's contention that by making parcel recommendations Wesco had "formulated" Valmonte's application. * * *

As in Ronald Valmonte, Wesco did not complete any portion of Part B for appellant; rather, the complete task of preparing that form, submitting the application fee, and mailing the application package was left to appellant's performance. His application for parcels which were in fact recommended by Wesco in accordance with a letter of instructions as to how to complete the application does not obscure the fact that his completion of the process was an exercise of "free choice." "[Appellant] may well have formulated his application based upon the advice supplied by Wesco, but that formulation was, nevertheless, his own." 87 IBLA at 202.

The agreement between appellant and Sierra Nevada is very similar to that reviewed in McCuistion and Valmonte. All Sierra Nevada provided was recommendations regarding parcels to be offered. There is no indication

Sierra Nevada signed, formulated, prepared, or filed Yoshiwara's simultaneous oil and gas lease application. We thus find appellant was not required to list Sierra Nevada on that application, and BLM's rejection of his application was, therefore, improper.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case file is remanded for further processing of the application.

R. W. Mullen
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Will A. Irwin
Administrative Judge

